

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Robert G. Taub, Vice Chairman;  
Mark Acton;  
Tony Hammond; and  
Nanci E. Langley

Competitive Product List  
Adding Round-Trip Mailer

Docket No. MC2013-57

**MOTION OF NETFLIX, INC.  
FOR ACCESS TO NONPUBLIC LIBRARY REFERENCE  
USPS-MC2013-57/NP2**

(August 23, 2013)

Pursuant to 39 C.F.R. § 3007.40, Netflix, Inc. ("Netflix") respectfully requests access to the nonpublic library reference USPS-MC2013-57/NP2, filed by the Postal Service on August 22, 2013. Netflix is a mailer which would be affected by the creation of the Round-Trip Mailer Product proposed by the Postal Service in this docket. Netflix needs access to the Library Reference, filed as part of the USPS' Reply Comments, in order to determine whether further response is necessary.

Pursuant to Appendix A to Part 3007 of 39 C.F.R., Netflix requests that the following individuals be designated its reviewing representatives:

Joy M. Leong, The Leong Law Firm (legal counsel for Netflix)

Robert M. Mitchell (economic consultant to Netflix)

Corie Wright (Director of Global Public Policy, Netflix)

Both Ms. Leong and Mr. Mitchell have been granted access to nonpublic information in previous cases before the Commission. Ms. Wright is a member of the D.C. Bar and is not involved in competitive decision-making at Netflix. These are the same reviewing representatives that received access to nonpublic library reference USPS-MC2013-57/NP1 in Order No. 1801, issued on August 8, 2013.

Disclosure to Netflix's reviewing representatives of the nonpublic information in the Library Reference will not cause commercial injury to any party. The representatives will not use the nonpublic information in any way inconsistent with the purposes authorized by Appendix A to Part 3007 of 39 C.F.R. A Statement of Compliance with Protective Conditions and accompanying Certifications are attached.

Netflix is authorized to state that Gamefly has consented to this Motion for Access. Netflix does not oppose GameFly's Motion for Access filed today.<sup>1</sup> Netflix has requested the Postal Service's consent but, as of the time of filing, has not received a response. The Postal Service did, however, consent to the Motion for Access filed by GameFly today for the same material.

If the Commission is unable to grant access immediately due to proprietary data of persons other than GameFly and the Postal Service, Netflix requests that its representatives be granted immediate access, subject to the protective conditions prescribed in 39 C.F.R. Part 3007, to the IBIS World report on the "DVD, game, and video rental market in the United States." GameFly has made a similar request in its

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<sup>1</sup> Gamefly Motion for Access, Docket No. MC2013-57, August 23, 2013.

Motion for Access filed today and notes that “[t]he only proprietary interests identified by the Postal Service in that report are those of IBISWorld, the market research firm from which the Postal Service purchased the report.”

Respectfully submitted,

Joy M. Leong  
The Leong Law Firm  
2020 Pennsylvania Avenue, N.W., Suite 120  
Washington, DC 20006  
(202) 640-2590

*Counsel for Netflix, Inc.*

August 23, 2013

## STATEMENT OF COMPLIANCE WITH PROTECTIVE CONDITIONS

The Postal Service (or a third party) has filed non-public materials identified as Nonpublic Library USPS-MC2013-57/NP2 in Commission Docket No. MC2013-57, Competitive Product List – Adding Round-Trip Mailer. The Postal Service (or a third party) requests confidential treatment of the materials (hereinafter “these materials”).

The following protective conditions limit access to these materials identified as Nonpublic Library USPS-MC2013-57/NP2 by the Postal Service (or third party). Each person seeking to obtain access to these materials must agree to comply with these conditions, complete the attached certifications, and provide the completed certifications to the Commission and counsel for the Postal Service.

1. Access to the materials is limited to a person as defined in rule 5(f), 39 CFR 3001.5, or an individual employed by such person, or acting as agent, consultant, contractor, affiliated person, or other representative of such person for purposes related to the matter identified as Docket No. MC2013-57, Competitive Product List – Adding Round-Trip Mailer. However, no person involved in competitive decision-making for any entity that might gain competitive advantage from use of this information shall be granted access to these materials. “Involved in competitive decision-making” includes consulting on marketing or advertising strategies, pricing, product research and development, product design, or the competitive structuring and composition of bids, offers or proposals. It does not include rendering legal advice or performing other services that are not directly in furtherance of activities in competition with a person or entity having a proprietary interest in the protected material.
2. No person granted access to these materials is permitted to disseminate them in whole or in part to any person not authorized to obtain access under these conditions.
3. Immediately after access has terminated under rule 39 CFR 3007.41 or 3007.51, a person (and any individual working on behalf of that person) who has obtained a copy of these materials shall certify to the Commission:
  - (a) That the copy was maintained in accordance with these conditions (or others established by the Commission); and
  - (b) That the copy (and any duplicates) either have been destroyed or returned to the Commission.
4. The duties of each person obtaining access to these materials shall apply to material disclosed or duplicated in writing, orally, electronically, or otherwise, by any means, format, or medium. These duties shall apply to the disclosure of excerpts from or parts of the document, as well as to the entire document.

5. All persons who obtain access to these materials are required to protect the document by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized disclosure of the document as those persons, in the ordinary course of business, would be expected to use to protect their own proprietary material or trade secrets and other internal, confidential, commercially sensitive, and privileged information.
6. The conditions shall apply to any revised, amended, or supplemental versions of these materials provided in the matter identified as Docket No. MC2013-57, Competitive Product List – Adding Round-Trip Mailer.
7. The duty of nondisclosure of each person obtaining access to these materials is continuing, terminable only by specific order of the Commission, or as specified in paragraphs 9 and 10, below.
8. Each person granted access to these materials consents to these or such other conditions as the Commission may approve.
9. Any written materials that quote or contain materials protected under these protective conditions are also covered by the same protective conditions and certification requirements, and shall be filed with the Commission only under seal. Documents submitted to the Commission as confidential shall remain sealed while in the Secretary's office or such other place as the Commission may designate so long as they retain their status as stamped confidential documents.
10. If a court or other administrative agency subpoenas or orders production of confidential information which a person has obtained under the terms of this protective order, the target of the subpoena or order shall promptly (within 2 business days) notify the Postal Service of the pendency of the subpoena or order to allow it time to object to that production or seek a protective order.

## CERTIFICATION

The undersigned represents that:

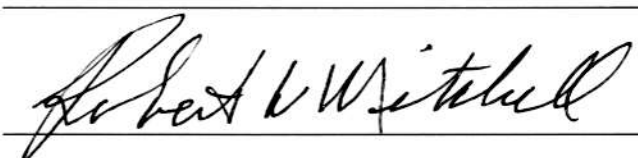
Access to these materials provided in the matter identified as Docket No. MC2013-57, Competitive Product List – Adding Round-Trip Mailer, by the Postal Service, has been authorized by the Commission. The cover or label of the copy obtained is marked with my name. I agree to use the information only for purposes of analyzing matters at issue in the matter identified as Docket No. MC2013-57, Competitive Product List – Adding Round-Trip Mailer. I certify that I have read and understand the above protective conditions and am eligible to receive access to materials under paragraph 1 of the protective conditions. I further agree to comply with all protective conditions and will maintain these materials in strict confidence in accordance with all of the protective conditions set out above.

Name	<u>Joy M. Leong</u>
Firm	<u>The Leong Law Firm</u>
Title	<u>Partner</u>
Representing	<u>Netflix, Inc.</u>
Signature	<u>Joy M. Leong</u>
Date	<u>8/8/13</u>

## CERTIFICATION

The undersigned represents that:

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Name	<u>Robert W. Mitchell</u>
Firm	<u>RMIT Associates</u>
Title	<u>Principal</u>
Representing	<u>Netflix</u>
Signature	<u></u>
Date	<u>Aug 7-2013</u>

## CERTIFICATION

The undersigned represents that:

Access to these materials provided in the matter identified as Docket No. MC2013-57, Competitive Product List – Adding Round-Trip Mailer, by the Postal Service, has been authorized by the Commission. The cover or label of the copy obtained is marked with my name. I agree to use the information only for purposes of analyzing matters at issue in the matter identified as Docket No. MC2013-57, Competitive Product List – Adding Round-Trip Mailer. I certify that I have read and understand the above protective conditions and am eligible to receive access to materials under paragraph 1 of the protective conditions. I further agree to comply with all protective conditions and will maintain these materials in strict confidence in accordance with all of the protective conditions set out above.

Name                      Corie Wright

Firm                        Netflix, Inc.

Title                      Director, Global Public Policy

Representing            Netflix, Inc.

Signature                

Date                        8/8/13